



08 JUN 2007

CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON DC 20044-4300

In re Application of	:	
EBERL	:	
Serial No.: 10/551,443	:	DECISION ON
PCT App. No.: PCT/EP01/11634	:	
Int'l Filing Date: 08 October 2001	:	RENEWED PETITION
Priority Date: 07 October 2000	:	
Attorney Docket No.: 101795.56306US	:	UNDER 37 CFR 1.137(b)
For: DEVICE AND METHOD FOR DETER-	:	
MINING THE ORIENTATION OF AN EYE	:	

This decision is in response to applicant's renewed petition to revive under 37 CFR 1.137(b) filed 29 January 2007 in the above-captioned application in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 08 October 2001, applicant filed international application PCT/EP01/11634 which claimed priority to an earlier application filed 02 October 2000. The thirty-month period for paying the basic national fee in the United States expired at midnight on 07 April 2003.

On 29 September 2005, applicant filed a request for entry into the U.S. national stage along with a petition under 37 CFR 1.137(b).

On 08 June 2006, a decision dismissing applicant's petition was mailed, questioning whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unavoidable or unintentional under 37 CFR 1.137.

On 08 August 2006, Petitioner filed a renewed petition under 37 CFR 1.137(b). On 28 November 2006, a decision dismissing the petition was mailed, indicating that a detailed account of the time period between 07 April 2003 until the filing of the present petition be providing evidence that the delay in filing the request for entry into the U.S. national stage was unintentional.

DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicants submitted the basic national fee on 29 September 2005.

As to item (2), applicants submitted the petition fee on 29 September 2005.

Item (3) still has not been satisfied. The declaration of facts by Mr. Dickerson has been considered. The delay from at least November 20, 2003, when the bankruptcy trustee purportedly transferred the rights to Mr. Dickerson, until the filing of the U.S. Basic National Fee on 29 September 2005 still has not been adequately explained.

MPEP § 711.03(c), II. D., states that “where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as ‘unintentional’ within the meaning of 37 CFR 1.137(b).”

The declaration states that until the fall of 2006, Mr. Dickerson was of the belief that each of the six PCT applications he desired to prosecute needed to be translated into English to enter the U.S. national stage (§ 24 and 28) and that he desired to translate the six applications himself (§ 27 and 28). On 10 November 2004, Mr. Dickerson first contacted US counsel regarding representation for the US prosecution and received a response on 24 November 2004. On 13 February 2005, Mr. Dickerson replied to US counsel’s inquiry and not until 17 April 2005, did Mr. Dickerson provide materials and instructions for entering the US national stage. In April of 2005, it was agreed that applicant’s representative would be responsible for the translations (§ 39). However, from November 2003 until that time, it does not appear that applicant translated any of the six applications referred to. From a reading of the declaration it appears that applicant did not attempt to make any inquiries about entering the US national stage until November 2004 when he first contacted his present US attorney.

The declaration gives numerous other reasons for the delay between January 2004 and February 2005: preparing 2002 German tax return (§ 30); studying for the “European Qualifying Exam” (EQE) for admittance to the EPO bar (§ 31); legal battle over responsibility for water damage to apartment (§ 32); sick for several weeks (§ 33); inheritance of a small sum of money from a relative in the U.S. (§ 34); searching for office space and setting up office (§ 35); and prosecuting “the six Euro-PCT applications” and studying for a re-sit of the EQE (§ 37). However, possibly aside from being sick for several weeks, these delays merely show how applicant decided to spend his time. A delay due to applicant’s deliberately choosing other priorities over filing the instant application appears to be an intentional delay.

Mr. Dickerson first contacted his present US patent attorney on 10 November 2004. A

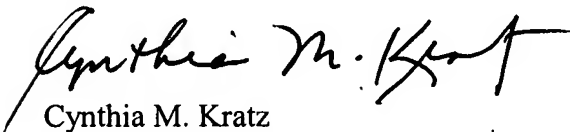
reply was received requesting more detailed information on 24 November 2004. (§ 36) Mr. Dickerson replied to his attorney on 13 February 2005, and on 26 February 2005 the attorney tentatively agreed to take over representation. (§ 38) As noted above, the delay from 24 November 2004 to 13 February 2005 appears to have been due to applicant's deliberately choosing other priorities over filing the instant application. Mr. Dickerson gave the documents, which needed to be translated, for the instant application (PCT/EP01/11634) to his attorney on 17 April 2005. (§ 39). The delay between 17 April 2005 and 29 September 2005 has not been adequately explained. Mr. Dickerson again details items he spent his time on between that time, but again, this appears to be a matter of prioritizing. Nor has Applicant's representative explained the delay between 17 April 2005 and 29 September 2005. A delay due to applicant's deliberately choosing other priorities over filing the instant application appears to be an intentional delay.

CONCLUSION

For the reasons above, applicant's petitions under 37 CFR 1.137(b) is **DISMISSED**. The application remains **ABANDONED** as to the United States of America.

Any reconsideration on the merits of this petition must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3286
Fax: (571) 273-0459